

2009 DRAFTING REQUEST

Bill

Received: **09/23/2008**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0103 -

Topic:

Consolidated tax statements

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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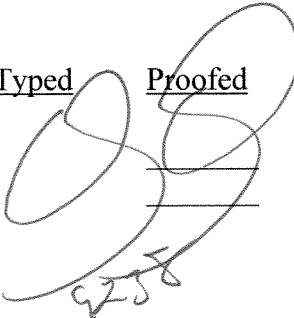
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/P1	jkreye	9/23 jlw					

FE Sent For:

<END>

0372/P1

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Require Copy of Federal Consolidated Return
- Tracking Code: BB0103
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Medium

Intent:

Allow the Department of Revenue to require a corporation to file consolidated tax statements necessary to determine the taxable income received by affiliated or related corporations. This allows the department to determine whether some of the entities on the returns are a unitary business. (See attached description and drafting instructions.)

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: September 15, 2008

PROPOSAL 8: Require Copy of Federal Consolidated Return

DESCRIPTION OF CURRENT LAW AND PROBLEM

When a group of related entities files on a consolidated basis, the federal consolidated return often provides critical information regarding how the related entities operate and interact with each other. Wisconsin has only limited information from state tax returns for the entities actually present and doing business in Wisconsin. Some taxpayers refuse to provide this information, stating that since Wisconsin is a separate entity state the other entities' information is not relevant.

In *Louis Dreyfus Petroleum Products Corp. v. WDOR*, Docket No. 03-I-132 (TAC 06/15/06), Ruling and Order on Motion to Compel Discovery, the Tax Appeals Commission concluded that the consolidated return is relevant and therefore, discoverable. The transactions between related entities and the finances of those related entities are relevant to the question of whether businesses are unitary and their income apportionable to Wisconsin. In this case, the department was required to issue a discovery request to obtain a copy of the federal consolidated return and then to file Motion to Compel Discovery with the Tax Appeals Commission. This statutory change would allow the department to obtain a copy of the federal consolidated return during the audit process thus eliminating the expense of discovery on both the taxpayer and the department.

RECOMMENDATION FOR ACTION

Codify the Tax Appeals Commission's decision in *Louis Dreyfus Petroleum Products Corp.*, Docket No. 03-I-132, (TAC June 15, 2006). The Wisconsin Department of Revenue should have access to federal consolidated returns to determine whether entities on the return are a unitary business.

ADMINISTRATIVE IMPACT

Minimal. This proposal would eliminate the cost of issuing a discovery request for a copy of the federal consolidated return.

FAIRNESS /TAX EQUITY

Allows the department to determine if entities doing business in other states have nexus with Wisconsin and are unitary with the business entity having presence in Wisconsin. Assist department in determining the fair share of taxes owed by related entities.

IMPACT ON ECONOMIC DEVELOPMENT

None

FISCAL EFFECT

Minimal

DRAFTING INSTRUCTIONS

Amend section 71.30(8)(b). For the purpose of this chapter, if a corporation which is required to file an income or franchise tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations or has income that is regulated through contract or other arrangement, the department of revenue may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations, including but not limited to a determination as to whether the corporations are a unitary business.

Amend sec. 71.74(6). **Consolidated statements.** For the purpose of this chapter, whenever a corporation which is required to file an income or franchise tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the department may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations, including but not limited to a determination as to whether the corporations are a unitary business.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Date of publication.

INTERESTED/AFFECTED PARTIES

Corporations who have affiliated entities that are unitary with entity doing business in Wisconsin.

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY: Lili Crane (608) 266-8025

0372/P1
stays

DOA - BB0103...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 9-23-08

TAXATION ← head
INCOME TAXATION ← subhead

MOVE

x

do not gen

- 1 AN ACT to amend 71.30 (8) (b) and 71.74 (6) of the statutes; relating to:
- 2 requiring corporations to submit consolidated statements for income and
- 3 franchise tax purposes. *no budget ✓*

Analysis by the Legislative Reference Bureau

Under current law, if a corporation that must file a state income or franchise tax return is affiliated with any other corporation, the Department of Revenue (DOR) may require that the corporation submit a consolidated statement to DOR so that DOR may determine the taxable income received by any affiliated corporation. Under this bill, DOR may also require a corporation to submit a consolidated statement in order for DOR to determine whether the corporation and any affiliated corporation are a unitary business.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 71.30 (8) (b) of the statutes is amended to read:
- 5 71.30 (8) (b) For the purpose of this chapter, if a corporation which is required
- 6 to file an income or franchise tax return is affiliated with or related to any other

1 corporation through stock ownership by the same interests or as parent or subsidiary
2 corporations or has income that is regulated through contract or other arrangement,
3 the department of revenue may require such consolidated statements as in its
4 opinion are necessary in order to determine the taxable income received by any one
5 of the affiliated or related corporations or to determine whether the corporations are
6 a unitary business.

7 **SECTION 2.** 71.74 (6) of the statutes is amended to read:

8 71.74 (6) CONSOLIDATED STATEMENTS. For the purpose of this chapter, whenever
9 a corporation which is required to file an income or franchise tax return is affiliated
10 with or related to any other corporation through stock ownership by the same
11 interests or as parent or subsidiary corporations, or whose income is regulated
12 through contract or other arrangement, the department may require such
13 consolidated statements as in its opinion are necessary in order to determine the
14 taxable income received by any one of the affiliated or related corporations or to
15 determine whether the corporations are a unitary business.

16 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0372/P1

JK:jld:rs

DOA:.....Lillethun, BB0103 - Consolidated tax statements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

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16 (END)